

§46 ZONING BOARD OF APPEALS *Revised 09-03-10*

46-1 Purpose of the Board

The Zoning Board of Appeals is an agency, separate from the Planning and Zoning Commission, engaged in, and necessary to the proper administration of the zoning regulations. The Zoning Board of Appeals is an administrative agency which exercises quasi-judicial functions to provide relief in cases where literal application of the Zoning Regulations acts peculiarly on a particular piece of property to produce an undue hardship on that property under special circumstances and to provide a local review for questions arising from zoning enforcement. The exercise of the Board's power to vary the zoning regulations is guided by statute and by general rule of law as well as local zoning conditions.

46-2 Establishment of the Board

On the basis of the foregoing, the Zoning Board of Appeals in Westport, established pursuant to the Connecticut General Statutes and the Westport Town Charter, shall have all the powers and duties prescribed by law and these regulations.

46-3 Powers and Duties

46-3.1 Appeals

The Zoning Board of Appeals shall hear and decide appeals where it is alleged that there is any error in any order, requirement, or decision regarding the enforcement of these regulations made by the official charged with zoning enforcement. Such appeals shall be made within thirty (30) days of the decision appealed from. Nothing in this paragraph shall be interpreted to permit any person, otherwise entitled to appeal to the Superior Court an order, requirement or decision of the Planning and Zoning Commission or of the Administrative Review Committee to appeal such order, requirement or decision to the Zoning Board of Appeals.

46-3.2 Variances

The Zoning Board of Appeals shall determine and may vary the application of the zoning regulations in harmony with their general purpose and intent and with due consideration for conserving the public health, safety, convenience, welfare and property values solely with respect to a parcel of land where owing to conditions especially affecting such parcel but not affecting generally the district in which it is situated, a literal enforcement of such zoning regulations would result in exceptional difficulty or unusual hardship, so that substantial justice will be done and public safety and welfare secured; provided, however, that in no case may a variance be granted which permits a commercial use in a district in which such use is not otherwise allowed by these regulations, including the extension of a non-conforming commercial use.

- (a) Unless otherwise specified by the Zoning Board of Appeals, a Zoning Permit must be obtained within one year of the date the variance is filed on the land records. When a Zoning Permit is issued, all conditions associated with the variance must be adhered to or completed as appropriate. If the zoning permit is not obtained within one year of the date the variance is filed on the land records another Zoning Board of Appeals hearing will be required in order for the Zoning Board of Appeals to determine that conditions or circumstances relating to the property have not changed.

- 46-3.2.1 Whenever a variance is granted, the approval of a site plan by the Planning and Zoning Commission in accordance with §43 and §44 shall also be required prior to the issuance of a zoning permit in the following circumstances:
- (a) In all cases, in a non-residential district except for (c) or (d).
 - (b) In cases involving non-conforming uses, or non-residential use or multi-family use of buildings structures or land, in a residential district, except for (c) or (d).
 - (c) Site Plan approval is not required for architectural and structural features such as exterior staircases or elevators mandated by the Fire Marshal or Building Official for reasons of public safety, or for minor structural changes or awnings, if the Planning and Zoning Director determines that the dimensions of such structural features or structural changes or awnings have been clearly specified in the variance granted, and that no useful purpose would be served by seeking site plan approval. The Planning and Zoning Director shall note any such determination in the file.
 - (d) Site plan approval is not required for accessory apartments that have been approved by the Zoning Board of Appeals, if the Planning and Zoning Director determines that the public has been sufficiently informed through the Zoning Board of Appeals hearing, and that no useful purpose would be served by seeking site plan approval. The Planning and Zoning Director shall note any such determination in the file.
- 46-3.2.2 Whenever an application for a variance is submitted to the Zoning Board of Appeals for a use, a structure or activity which lies either wholly or partially within the Coastal Area, the Zoning Board of Appeals shall review a Coastal Site Plan to assure compliance with §31-10 of these regulations and with the CAM Act. The Statutory requirement for a Coastal Site Plan Review shall not be varied by the Zoning Board of Appeals.
- 46-3.2.3 Whenever an applicant requests a variance from §31-11, Flood Plain Regulations, the following provisions shall apply:
- (a) Variances shall not be granted within any designated regulatory floodway for any development which will cause an increase in flood levels during the base flood discharge. The burden of proof lies with the applicant subject to review by the Town Engineer. If the Town Engineer determines that Flood and Erosion Control Board review is required the project must also be acceptable to the F&ECB.
 - (b) The applicant for a variance shall be notified in written statement signed by the Clerk of the Zoning Board of Appeals that: (1) the issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance, and (2) such construction below the base flood level increases risks to life and property. Such notification shall be maintained with a record of all variance actions as required in paragraph (c) of this section.

- (c) The Zoning Board of Appeals shall (1) maintain a record of all such variance actions, including the findings adopted upon their issuance, (2) include such variances issued in its annual report, and (3) submit said annual report to the Administrator.

46-3.2.4 Whenever an applicant requests a variance from §31-10, Setbacks from Waterbodies, Watercourses and Wetlands, such variances shall not be granted unless the Board makes a specific finding that such project will have its lowest finished floor elevation at or above the 100-year based flood level, will not adversely affect the flood carrying capacity of the watercourse, and/or will not adversely impact any designated wetland area, as applicable.

46-3.2.5 In a Zoning Board of Appeals case where a nonspecific setback variance has been granted for a nonconforming lot, any new building, structure or construction must conform to the nonconforming setbacks as defined in §6-3.1 of these regulations.

46-4 Zoning Board of Appeals Procedures

All applications and appeals to the Zoning Board of Appeals shall be filed in a form prescribed by and in accordance with procedures established by the Zoning Board of Appeals and shall be accompanied by a fee pursuant to an adopted Fee Schedule.

The following information must also be submitted:

A list of names and addresses of all property owners within 500' of the subject property in an AAA and AA zone; and within 250' of the subject property in all other zones.

Variances are granted in accordance with specific plans approved by the Zoning Board of Appeals. The demolition of a structure cannot exceed the demolition shown on the plan approved by the Zoning Board of Appeals.

46-5 Procedures for Variances in Flood Hazard Zones Pursuant to §31-11

46-5.1 Pre-Existing, Small Lot Location

Variances may be issued by the Zoning Board of Appeals for new construction and substantial improvements to be erected on a lot of one-half (1/2) acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, in conformance with §46-5.4.2.

46-5.2 Functionally Dependent Uses

Variances may be issued for new construction and substantial improvement and other development necessary for the conduct of a functionally dependent use provided the structure or other development is protected by methods that minimize flood damage, create no additional threat to public safety and meet the requirements of §46-5.4.2.

46-5.3 Floodway Prohibition

Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.

46-5.4 Considerations For Granting of Variances

46-5.4.1 In passing upon such applications, the Zoning Board of Appeals shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this ordinance, and:

- (a) The danger that materials may be swept onto other lands to the injury of others;
- (b) The danger to life and property due to flooding or erosion damage;
- (c) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
- (d) The importance of the services provided by the proposed facility to the community;
- (e) The necessity of the facility to waterfront location, in the case of a functionally dependent facility;
- (f) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
- (g) The compatibility of the proposed use with existing and anticipated development;
- (h) The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
- (i) The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
- (j) The safety of access to the property in times of flood for ordinary and emergency vehicles;
- (k) The safety of access to the property in times of flood for ordinary and emergency vehicles;
- (l) The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site and;
- (m) The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems and streets and bridges.

46-5.4.2 Conditions for Variances

- (a) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief; and in the instance of historical building, a determination that the variance is the minimum necessary so as not to destroy the historic character and design of the building;
- (b) Variances shall only be issued upon
 - (1) a showing of good and sufficient cause,
 - (2) a determination that failure to grant the variance would result in exceptional hardship, and;

- (3) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisance, cause fraud on or victimization of the public or conflict with existing laws or ordinances.
- (c) Any applicant to whom a variance is granted shall be given written notice specifying the difference between the base flood elevation and the elevation to which the structure is to be built and stating that the cost of flood insurance will be commensurate with the increase risk resulting from the reduced lowest floor elevation.

46-6 Public Hearing

The Zoning Board of Appeals shall hold a public hearing on all applications and appeals within sixty-five (65) days after the date of receipt and proper notice in accordance with the provisions of the General Statutes.

46-7 Board Action

The Zoning Board of Appeals shall decide each case in accordance with the General Statutes.

46-8 Notice of Decision

Notice of decision of the Zoning Board of Appeals shall be published in accordance with the General Statutes.

46-9 Effective Date

Variances shall become effective upon the filing of a copy thereof in the office of the Town Clerk and the recording of a copy thereof in the land records of the Town.